



June 8, 2015

via email

Rebekah Ross,
Department of Planning, Building and Code Enforcement
City of San Jose
rebekah.ross@sanjoseca.gov

Re: Lands of Mazzone, PDC 13-028

Dear Ms. Ross,

The Santa Clara Valley Audubon Society (SCVAS) has reviewed the Initial Study and Mitigated Negative Declaration (ISMND) for the Planned Development Rezoning to allow up to 8 detached town homes and associated infrastructure at the confluence of Alamitos and Golf Creeks.

SCVAS' mission is to preserve, to enjoy, to restore and to foster public awareness of native birds and their ecosystems, mainly in Santa Clara County. As stewards for avian species and their environmental resources, we are always concerned with any development that may consume wildlife habitat and/or impact river and riparian ecosystems, encroach into stream setbacks and floodplains, or could potentially result in the eventual conversion of natural creek banks and riparian ecosystems to costly reinforced structures at the project site or beyond.

The California Environmental Quality Act (CEQA) requires a leading agency to prepare an Environmental Impact Report (EIR) whenever substantial evidence, in light of the entire record, supports a "fair argument" that the project may have a significantly adverse impact on the environment. After reviewing the documents for this project, SCVAS concluded that the ISMND, as currently presented, is inadequate. The Project, as described, cannot rely on this ISMND to make the finding of "no unavoidable significant impacts to biological resources after mitigation." In fact, the ISMND dismisses a body of substantial evidence, namely the Santa Clara Valley Habitat Conservation/Natural Communities Protection Plan (SCVHP), in favor of lesser protection and mitigation than what the SCVHP designates and affords at this precise location.

p. 1 of 5

Animal Movement and wildlife migratory corridors

The ISMND finds that the project would have less than significant impact on animal movement and wildlife migratory corridors. It proposes that animal movement and migration is already compromised by Golf Creek passing through culverts further upstream of the Project site. Thus, it claims that further encroachment and degradation would be of no significant impact.

This assessment is not valid since it is not based on fact, nor is the expert opinion based on fact:

1) There is ample scientific evidence that shows wildlife regularly uses culverts and overpasses for crossings barriers.¹

2) Golf Creek and the PG&E corridor provide wildlife connectivity between Guadalupe and Alamos Creek, as well as between Alamos Creek and Guadalupe Oak Grove Park (see attached map). Golf Creek at the project site is thus important for wildlife movement on a regional level.

3) A yearlong study of animal movement and migration along Golf Creek is needed prior to dismissing the site. Because there were no specific studies of wildlife passage, the ISMND failed to recognize the importance of Golf Creek in providing one of the few safe passages under Almaden Expressway. This is an important connection not only to the upstream reaches of Golf Creek, but also to Guadalupe Oak Grove Park and the Guadalupe Creek (see attached map). Golf Creek at the project site is thus important for wildlife movement on a regional level.



The proposed Project would encroach on the Golf Creek corridor with homes 30 feet from top-of-the-bank, lights, pets, removal of native trees in the riparian corridor, and a new road and culvert. These encroachments can be expected to cause a significant and permanent barrier to animal movement and significantly increase habitat fragmentation in the area.

¹ See <http://www.uvm.edu/rsenr/wfb224/NG%20Highway%20Undercrossings.pdf> and <http://www.wildlifecrossing.net/california/>

CEQA requires that the Lead Agency evaluate potential environmental effects based to the fullest extent possible on scientific and factual data. In the absence of defined thresholds, significance conclusions must be based on substantial evidence, which includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts (CEQA Guidelines §15064). The ISMND provides no defined and implementable thresholds, no fact, no data for animal movement at Golf Creek. Instead, it relies on speculation to justify the findings of “no significant impact to wildlife movement.”

Based on our review of the MND and supporting documents, we have concluded that the MND does not comply with the basic requirements of CEQA. It uses speculation rather than substantial evidence and fact as the basis for conclusions that the Project would not have significant and unavoidable impacts on wildlife movement and migration corridors.

San Jose Riparian Corridor Policy Study

The San Jose General Plan refers to the San Jose Riparian Corridor Policy Study to guide new developments. This Study directs buildings, structures and ornamental landscape areas to set a minimum of 100 feet from the edge of the riparian corridor (or top-of-the-bank, whichever is greater). Exceptions may be considered in some limited circumstances as long as basic riparian habitat protections are achieved (Page 31). We maintain that the proposed 30-foot setback from Golf Creek precludes the achievement of “basic riparian habitat protections” at the confluence of the two creeks. Furthermore, consideration of an exception, in itself, constitutes a significant, unavoidable impact – especially when it is applied to sites with disproportionately long riparian frontage, as in this case.

Santa Clara Valley Habitat Conservation Plan, Natural Community Protection Plan (SCVHP)

The ISMND finds that a “conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Protection Plan, or other approved local, regional or state habitat conservation plan” is of less than significant impact. We strongly disagree.

The SCVHP designates both Alamitos and Golf Creek “Category 1” creeks, a designation that mandates a setback of 100 feet. The ISMND proposes that a 75-foot riparian setback from Alamitos Creek and a 30-foot setback from Golf Creek suffice. This is in clear conflict with the provisions of an adopted Habitat Conservation Plan and a Natural Community Protection Plan and should be considered a significant, unavoidable impact.

There are many reasons to adhere to the required 100-foot setback along Alamitos and Golf Creeks: it is the minimal setback needed to preserve and protect streams and water quality, to allow birds and wildlife a stretch of riparian and upland land and vegetation for breeding, and to limit disturbance to migration corridors. This is especially important near residential neighborhoods, where people’s activity and pets, especially cats, disturb nesting activities and reduce breeding success.² The confluence of two creeks is likely the most important habitat to protect, and it is important for the management of storm water.

² <https://www.sciencenews.org/article/cats-kill-more-one-billion-birds-each-year>

Therefore, we strongly disagree with the statement, "*The reach of Golf Creek adjacent to the project site does not fit the definition of a Category 1 stream and thus, appears to be incorrectly identified. The reach of Golf Creek adjacent to the project more accurately fits a Category 2 stream based on the SCVHP definition. This apparent incorrect mapping of Golf Creek as a Category 1 stream is pronounced in other areas where Golf Creek is entirely contained within underground pipes and yet mapped as Category 1. . . . Therefore, for the purposes of this analysis Golf Creek is treated as a Category 2 stream.*" MND, p. 89.

The reach of Golf Creek adjacent to the project site is important and should be retained as a Category 1 stream for biological reasons. To change the category of the reach of Golf Creek from Category 1 to Category 2, additional environmental analysis is required for the SCVHP.

For water quality, wildlife connectivity and ecosystem purposes, a stream is a continuum, which drove the SCVHP direction that "*Category 2 reaches cannot occur downstream of a Category 1 reach*" (p. 6-48).

This means that allowing Golf Creek to be treated as a Category 2 stream could cause a default change to the designation of the entire upstream portion of Golf Creek – a significant and unavoidable indirect impact. An EIR is required to analyze this impact, alternatives should be considered, and all residents near Golf creek should be notified of this change, as required by CEQA law.

The ISMND provides no explanation for dismissing the requirement of a 100-ft buffer from Alamitos Creek, and instead proposing a minimum setback of 75 feet. The statement, "The 75-foot riparian setback from Alamitos Creek and the 30-foot setback from Golf Creek are not expected to change the value of these creeks as a wildlife corridor." Again, this statement is not based on scientific evidence or fact. Furthermore, the SCVHP provides evidence that narrowing the setback of a Category 1 stream may impact not only wildlife movement but also impact water quality, effect an increase in use by humans and their pets, and more. Unless 100-foot setbacks from top-of-the-bank are adhered to, the proposed narrower setback should be considered a significant and unavoidable impact.

Project description is inadequate: San Jose General Plan

In 2013, the City Council designated 1.38 acres of the 1.81 residential Neighborhood (8 du/ac). The remaining 0.44 acres were designated Open Space, Parklands and Habitat. The 0.44 acres are not shown on Figure 5, General Plan Map or other project maps. Thus, it is not clear to the public that the 0.44 acres of Open Space, Parklands and Habitat are not included in the footprint of the developed subdivision.

An MND is appropriate only when all potentially significant effects of the project can and will be avoided or mitigated to a level of insignificance by project revisions or other requirements imposed on the project. In addition, the California Supreme Court has stated that an EIR is required to resolve “uncertainty created by conflicting assertions” and to “substitute some degree of factual uncertainty for tentative opinion and speculation” [No Oil, Inc. V. City of Los Angeles (1975) 13 Cal.3d 68, 85.] We believe that our comments, and the additional comment letters submitted by environmental groups together raise a "fair argument" (Laurel Heights Improvement Assoc. v. U.C. Regents (1993) 47 Cal.4th 376) that the project may impose significant adverse and unavoidable environmental impact to biological resources.

We believe that the project should be modified to maintain the riparian setbacks as indicated in the SCVHP. In addition, an EIR is needed, and alternatives must be explored for the delineation of the access road to avoid removal of native trees.

Thank you for the opportunity to comment on the proposed project. We ask that you keep us informed on the planned project approval timeline and process, including but not limited to all hearings and decision-making schedules. Please keep SCVAS on the notification list for the proposed project site.

Sincerely,



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